

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200652009**

Release Date: 12/29/2006

Index Number: 1362.04-00

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-154435-05

Date:

September 6, 2006

X =

Date 1 =

Date 2 =

Dear

This letter responds to a letter dated October 3, 2005, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated and elected to be an S corporation effective Date 1. On Date 2, X engaged in an event that terminated X's S election. In connection with this event, X may have also created a second class of stock. If X created a second class of stock, this would have terminated X's S election had the election not already terminated on Date 2.

X represents that it did not intend to terminate its S election. As soon as X discovered the terminating event, X initiated corrective action in order to once again become a small business corporation. In addition, X has eliminated the possible second class of stock. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S election terminated on Date 2, and that this termination was inadvertent within the meaning of § 1362(f).

Under § 1362(f), X will be treated as if it were an S corporation from Date 2 and thereafter, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d). Accordingly, all of the shareholders of X, in determining their respective income tax liabilities for the period beginning Date 2 and thereafter, must include their pro rata share of the separately and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed on whether X was otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely yours,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)